for the writ of certiorari in said case, and the interest of the United States therein, and all of the facts stated in the suggestion. Said communication was referred to the Solicitor General for attention. The said communication was the first information as to said case and was considered by him in connection with the decision of the Circuit Court of Appeals in said case (230 Fed. 553). It was also referred by him to Assistant Attorney General Frank K. Nebeker for his consideration and opinion. The opinions of said Solicitor General and Assistant Attorney General were in favor of acceding to the suggestion of the First Assistant Secretary of the Interior that a memorandum supporting the application for the writ of certiorari be filed, and thereupon the suggestion was prepared in the office of the Solicitor General, following in its recital of fact the statements contained in the memorandum received from said First Assistant Secretary of the Interior, and joining in the request that said writ of certiorari be allowed. This was the only source of said suggestion. As to the statements in said motion the Solicitor General knows nothing about them.

ALEX. C. KING,
Solicitor General.

May, 1920.

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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

SILVER KING COALITION MINES COMPANY, a corporation, petitioner, *v.* CONKING MINING COMPANY.	No. 158.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

SUGGESTIONS ON BEHALF OF THE UNITED STATES.

Comes now the Solicitor General, on behalf of the United States, and makes the following suggestions with respect to certain phases of this case.

The United States claims no interest in the property involved in this suit. Its only concern is with respect to the construction which the Circuit Court of Appeals placed upon section 2327, R. S., as amended by the Act of April 28, 1904, ch. 1796, 33 Stat. 545 (U. S. Comp. St. Ann., 1916, § 4626). That court held in effect that the statute is not applicable in determining the boundaries of claims upon which patents had issued prior to the

date of the Act. It is believed, on the contrary, that the amendment of April 28, 1904, is merely declaratory of existing law and the practice of the Land Department based on this construction of the statute should be sustained.

The pertinent part of section 2327, which was the part inserted by the amendment, is as follows:

> Where patents have issued for mineral lands, those lands only shall be segregated and shall be deemed to be patented which are bounded by the lines actually marked, defined, and established upon the ground by the monuments of the official survey upon which the patent grant is based, and surveyors-general in executing subsequent patent surveys, whether upon surveyed or unsurveyed lands, shall be governed accordingly. The said monuments shall at all times constitute the highest authority as to what land is patented, and in case of any conflict between the said monuments of such patented claims and the descriptions of said claims in the patents issued therefor the monuments on the ground shall govern, and erroneous or inconsistent descriptions or calls in the patent descriptions shall give way thereto.

The statute has been considered by the Land Department to have a retroactive aspect, and as being declaratory of existing law and departmental practice; consequently, in determining the location of mining claims patented before the

amendment of the Act in 1904, monuments on the ground were recognized as controlling. If such monuments are not controlling with respect to mining claims patented before the amendment of 1904, the practice of the Land Department should be changed.

It appears that during the period from 1891 to 1904 it was the practice of the Land Department in issuing patents to mention only the initial monument and the tie monument, and not to mention the other monuments of the mining claim. Thus it is brought about that only one or two of the survey monuments are specifically mentioned and described in the patents of that period. Both the law (section 2325, R. S.) and the regulations contemplated and required that the survey boundaries of the mining claim should be distinctly marked by permanent monuments upon the ground. During said period, according to the annual reports of the General Land Office, upwards of 20,000 mineral patents were issued. In the main said patents were based upon special mineral surveys, and in many, no doubt, the course and distance calls may vary to a greater or lesser extent from the fixed monuments described in the field notes and established and found on the ground. In all such cases, under a broad application of the decision of the Circuit Court of Appeals in this case, it would appear that the metes and bounds calls contained in the patent will govern, a de-

scription of which does not appear on the face of the patent.

Since September, 1904, the Land Department has conformed its practice to and followed the mandate of the aforesaid Act of April 28, 1904, without regard to the fact that a particular claim may have been patented before the date of said Act. Furthermore, in proceedings arising in said Department, resort is constantly had to the field notes, to the official plat, and to parol evidence for the purpose of ascertaining and definitely determining the locus on the ground of the established survey monuments in order to identify and define patented areas. Occasion arises for such action in connection with the survey and patenting of adjoining mining claims and when segregating claims patented theretofore upon the subdivisional survey of townships. See *Sinnott* v. *Jewett,* 33 L. D. 91; *Drogheda and West Monroe Extension Lode Claims,* 33 L. D. 183; *United States Mining Co.* v. *Wall,* 39 L. D. 546; *Wasatch Mines Co.,* 45 L. D. 10; *Alaska United Gold Mining Co.* v. *Cincinnati-Alaska Mining Co.,* 45 L. D. 330.

A further ruling made by the Court of Appeals is disturbing to the Land Department. It is the holding, contrary to that of the District Court, that the field notes of the survey of the mining claim owned by the Conkling Mining Company were not admissible to overcome the clear and unambiguous terms of the patent.

It appears that the patent referred to the field notes, plat and other evidence, and then declared that there was granted the tract involved in this litigation; only two monuments were mentioned—those at the easterly limits of the claim—and the distance westerly called for from each was 1,500 feet. The field notes made like calls and the plat likewise showed the lines of those lengths. The field notes, however, described the westerly monuments, and the defendant, Silver King Coalition Mines Company, sought to show that these monuments were not 1,500 feet as called for in the field notes but 1,364.5 feet from the monuments described in the patent.

It will therefore be seen that the introduction of the field notes was desired only as a basis for evidence of the location on the ground of the posts at the westerly corners.

In view of the peculiar circumstances of this case, we are not apprehensive of the effect of this ruling, since we believe that it might well be held as of limited application, and as controlling only in cases presenting like special and peculiar features, and further that its force was broken by the fact that the court, after making that ruling, proceeded to a consideration of the field notes and of the evidence offered as to the location of the posts.

As the parties litigant will doubtless fully present the authorities upon the phases of this case, which are here set forth. we refrain from a dis-

cussion of them, contenting ourselves with the suggestion of the interest of the Government to the extent indicated.

Respectfully submitted.

WILLIAM L. FRIERSON,
Solicitor General.

FRANK K. NEBEKER,
Assistant Attorney General.

H. L. UNDERWOOD,
Special Assistant to the Attorney General.

NOVEMBER, 1920.

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